

California Regional Water Quality Control Board
Santa Ana Region

April 4, 2003

ITEM: 21

SUBJECT: Administrative Civil Liability Complaint No. R8-2003-0008,
Downtown Auto Wrecking, San Bernardino, San Bernardino
County

BACKGROUND

On February 19, 2003, the Executive Officer issued Administrative Civil Liability Complaint (ACL) No. R8-2003-0008 (copy attached) to Downtown Auto Wrecking (Downtown Auto) for alleged violations of the State's General Permit for Storm Water Runoff Associated with Industrial Activity (General Permit). In the ACL, the Executive Officer proposed an assessment of \$2,500 for the alleged violations.

INTRODUCTION

The matter before the California Regional Water Quality Control Board, Santa Ana Region (Board) is whether to affirm, reject, or modify the proposed administrative civil liability assessment against Downtown Auto.

ACL No. R8-2003-0008 was issued by the Executive Officer to Downtown Auto for failure to submit a required annual report and for failure to conduct and document an adequate inspection and monitoring program.

DISCUSSION

The General Permit regulates the discharge of storm water from industrial sites as required under Section 402(p) of the Federal Clean Water Act. Coverage under the permit is obtained by filing a Notice of Intent (NOI), site map, and a fee (annual fee of \$700), with the State Water Resources Control Board. Downtown Auto filed a NOI and obtained coverage under the General Permit, WDID No. 836S004480. Downtown Auto is located at 519 E. Mill Street, San Bernardino.

The General Permit requires all facility operators to submit an annual report by July 1 of each year. Prior to the July 1 deadline, a blank form for the annual report was mailed to Downtown Auto Wrecking. Because the annual report was not submitted on time, a Notice of Noncompliance was issued on July 15, 2002. A second Notice of Noncompliance was issued on August 15, 2002. Both letters were returned with a notation from the postal service that the letters were refused by the addressee. The Notices of Noncompliance requested submittal of the completed

annual report to the Board office by September 16, 2002, with a statement explaining why the annual report was not submitted by the July 1 deadline. The second notice also warned the discharger of the mandatory penalty for failure to submit the annual report.

On August 14, 2002, Board staff drove by the facility and verified that the facility was still in business at the location indicated above.

On September 16, 2002, Board staff spoke to Mr. Steve Reich, owner of the facility. Mr. Reich told Board staff that he would submit the annual report by September 20, 2002.

On September 23, 2002, Board staff called Mr. Reich and reminded him to submit the annual report and informed him about the mandatory penalty for non-submittal of the annual report.

On September 26, 2002, Mr. Reich submitted an incomplete annual report. The annual report submitted was a copy of the previous year's annual report, with all of the dates whited out and changed. The annual report also indicated that the facility did not have records of any visual inspections or monitoring records, as required by the General Permit. A complete annual report was finally submitted on October 16, 2002.

The facility violated the California Water Code and the Clean Water Act. The facility was repeatedly given notice to comply with the General Permit.

Section 13385(a)(2) of the California Water Code provides that any person who violates waste discharge requirements issued pursuant to the Federal Clean Water Act shall be civilly liable. Section 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs.

The facility is alleged to have violated the General Permit for 86 days (from July 1, 2002 to September 26, 2002, excluding both days). The maximum liability for this violation is \$860,000.

Section 13385(e) specifies factors the Board shall consider in establishing the amount of civil liability. These factors are discussed below.

Nature, Circumstances, Extent and Gravity of Violation

By submitting the NOI, the discharger certified that it would comply with the provisions of the permit. The General Permit requires that an annual report be submitted to the Board office by July 1 of each year. Despite several reminders, Downtown Auto failed to submit the report in a timely manner. The discharger was

aware of the requirement to submit the annual report by July 1. The discharger refused to accept two written notifications. The submitted report was inaccurate and incomplete. The discharger did not conduct the required inspections and monitoring during wet and dry weather conditions.

Ability to Pay the Proposed Assessment

The discharger has indicated that he is unable to pay the proposed penalty, but has not provided any information to support this claim.

Prior History of Violations

Board staff issued Notices of Non-Compliance for non-submittal of annual reports for 1992-93, 1995-96, 1996-97, 1999-00, 2000-01, and 2001-02. In 1998, an ACL was issued for non-submittal of the 1996-97 annual report. However, it was withdrawn based on the discharger's claim that the annual report was mailed to the wrong address. The facility has been chronically late in submitting its annual reports and has a long history of non-compliance, including the submission of incomplete and/or inaccurate reports. On October 3, 2001, the facility was notified of non-compliance issues, based on an inspection conducted by US EPA contractors.

Degree of Culpability

The discharger violated the terms of the General Permit by failing to submit its annual report and failing to conduct and properly document its inspection and monitoring program. The facility did not respond in a timely manner to staff requests to submit the annual report. Downtown Auto Wrecking has not been responsive to Board staff's efforts to bring the site into compliance.

Economic Benefit or Savings, if any, Resulting from the Violations

Cost savings from the late submittal of the annual report is estimated to be less than \$50. Additionally, Downtown Auto saved approximately \$360 (18 hours per year at \$20/hour) by not developing and implementing an inspection and monitoring program.

STATEWIDE ENFORCEMENT POLICY

On February 19, 2002, the State Water Resources Control Board adopted a State Water Quality Enforcement Policy to ensure that enforcement actions throughout the State are consistent, predictable, and fair. The above-described administrative civil liability complaint is in accordance with the Statewide Enforcement Policy.

RECOMMENDATION

After consideration of the above factors, staff recommends that the Board affirm the assessment of \$2,500, specified in the Administrative Civil Liability Complaint issued by the Executive Officer on February 19, 2003.

STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

In the matter of:)	Complaint No. R8-2003-0008
)	for
Steve Reich, Owner)	Administrative Civil Liability
Downtown Auto Wrecking)	
519 E. Mill Street)	
<u>San Bernardino, CA 92408</u>)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. You are alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), may impose liability under Sections 13385 of the California Water Code.
2. A hearing in this matter has been scheduled for the Board's regular meeting on April 4, 2003 at the Cucamonga County Water District, 10440 Ashford Street, Rancho Cucamonga, CA 91730-3057. You or your representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Board. An agenda for the meeting will be mailed to you not less than 10 days before the hearing date.
3. At the April 4, 2003 hearing, the Board will consider whether to affirm, reject or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. Your facility, located at 519 E. Mill St., San Bernardino, is currently regulated under the State's General Permit for Storm Water Discharges Associated with Industrial Activities, Water Quality Order No. 97-03-DWQ, NPDES No. CAS000001 (General Permit). Your facility's WDID Number is 836S004480. The General Permit requires you to submit an annual report by July 1 of each year.
5. Prior to the July 1 deadline, a blank form for the annual report was mailed to you. Because the annual report was not submitted, a Notice of Noncompliance was issued to you on July 15, 2002. A second Notice of Noncompliance was issued on August 15, 2002. Both letters were returned to us with a notation from the postal service that the letters were refused by the addressee. The Notices of Noncompliance requested submittal of the completed annual report to the Board office by September 16, 2002, with a statement explaining why the annual report was not submitted by the July 1 deadline, and the measures that you will take to ensure that future annual reports are submitted on time. The August 15, 2002 Notice of Noncompliance also warned you of the mandatory fines for failure to

submit the annual report. On August 14, 2002, Board staff drove by your site and verified that the facility was still in business at the location indicated above. On September 16, 2002, Board staff spoke to Mr. Steve Reich, who said that he would submit the report by September 20, 2002. On September 23, 2002, Board staff again called Mr. Reich to remind him about the annual report and about the mandatory penalties for non-submittal of the annual report. On September 26, 2002, Mr. Reich submitted an incomplete annual report.

6. The annual report submitted on September 26, 2002 was a copy of the previous year's annual report, with all of the dates whited out and changed. The annual report also indicated that the facility did not have records of any visual inspections or monitoring records as required by the General Permit. A complete annual report was finally submitted on October 16, 2002. The facility violated the California Water Code and the Clean Water Act.
7. Section 13385(a)(2) of the California Water Code provides that any person who violates waste discharge requirements issued pursuant to the Federal Clean Water Act shall be civilly liable. Section 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs.
8. The facility is alleged to have violated the General Permit for 86 days (from July 1, 2002 to September 26, 2002, excluding both days). The maximum liability for this violation is \$860,000.
9. Section 13399.33(c) of the California Water Code provides that the Regional Board shall impose a minimum penalty of \$1,000 for any person who fails to submit an annual report in accordance with Section 13399.31 of the Water Code.
10. Board staff have examined the cost savings from the late submittal of the annual report and determined that it is less than \$50. Additionally, Downtown Auto Wrecking saved approximately \$360 (18 hours per year at \$20/hour) by not implementing an inspection and monitoring program during the year. This factor was also considered in establishing the amount of civil liability.
11. Section 13385(e) specifies factors that the Board shall consider in establishing the amount of civil liability. These factors include: nature, circumstances, extent, and gravity of the violation, and, with respect to the discharger, the ability to pay, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. The factors are evaluated in the table on the following page.

Factor	Comment
A. Nature, Circumstances, Extent and Gravity of Violation	<p>The annual report was not submitted on time.</p> <p>Downtown Auto Wrecking refused to accept two written notifications and ignored two oral requests for submittal of the report.</p> <p>The report submitted was inaccurate and incomplete. The report indicates that the facility is not complying with the General Permit requirements. The facility did not conduct the required inspections or the monitoring and the facility has poor record keeping practices.</p>
B. Culpability	<p>The discharger violated the terms of the General Permit by failing to submit its annual report and failing to conduct and properly document its inspection and monitoring program. The facility did not respond in a timely manner to staff requests to submit the annual report. Downtown Auto Wrecking has not been responsive to Board staff's efforts to bring the site into compliance, and it has a long history of non-compliance, including submitting incomplete and/or inaccurate reports.</p>
C. Economic Benefit or Savings	<p>Cost savings from the late submittal of the annual report is estimated to be less than \$50. Additionally, Downtown Auto Wrecking saved approximately \$360 (18 hours per year at \$20/hour) by not developing and implementing an inspection and monitoring program.</p>
D. Prior History of Violations	<p>Board staff issued Notices of Non-Compliance or Notices of Violation for non-submittal of annual reports for 1992-93, 1995-96, 1996-97, 1999-00, 2000-01, and 2001-02. In 1998, an ACL was issued for non-submittal of the 1996-97 annual report. However, it was withdrawn based on the discharger's claim that the annual report was mailed to the wrong address. The facility has a history of submitting incomplete and/or inaccurate reports. On October 3, 2001, the facility was told of non-compliance issues based on an inspection conducted by US EPA contractors.</p> <p>The facility obtained coverage under the General Permit on April 6, 1992. Except for the timely submittal of the 1997-98 and 1998-1999 annual reports, the facility has been chronically late in submitting its annual reports.</p>
E. Staff Costs	<p>Regional Board staff spent approximately 10 hours investigating this incident (@\$70.00 per hour, the total cost for staff time is \$700).</p>

F. Ability to pay	The discharger has not provided any information to indicate that it is unable to pay the proposed amount. However, it is a small business with limited resources and Mr. Reich has indicated that business has not been good lately.
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12. The total maximum liability for the violations of the General Permit is \$860,000. After consideration of the above factors, the Executive Officer proposes that civil liability be imposed on Downtown Auto Wrecking in the amount of \$2,500 for the violations cited above. An invoice for this amount is enclosed.

WAIVER OF HEARING

You may waive your right to a hearing. If you wish to waive your right to a hearing, please sign the attached waiver form and return it in the enclosed preprinted envelope, together with the bottom portion of the invoice and a check or money order payable to the State Water Resources Control Board for \$2,500.

If you have any questions, please contact Milasol Gaslan at (909) 782-4419, or contact the Regional Board's staff counsel, Jorge Leon, at (916) 341-5180.

2-19-03
Date


Gerard J. Thibeault
Executive Officer

In the matter of:)
)
Steve Reich, Owner)
Downtown Auto Wrecking)
519 E. Mill Street)
San Bernardino, CA 92408)

Complaint No. R8-2003-0008
for
Administrative Civil Liability

WAIVER OF HEARING

I agree to waive the right of Downtown Auto Wrecking to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2003-0008. I have enclosed a check or money order, made payable to the State Water Resources Control Board, in the amount of \$2,500. I understand that I am giving up Downtown Auto Wrecking's right to be heard and to argue against allegations made by the Executive Officer in this complaint, and against the imposition of, and the amount of, the liability proposed.

Date

for DOWNTOWN AUTO WRECKING